



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

COASTAL RESOURCES MANAGEMENT COUNCIL

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In accordance with notice to members of the Rhode Island Coastal Resources Management Council's Planning and Procedures subcommittee, a meeting of the subcommittee was held on Tuesday, August 21, 2007 at 5:00 p.m. at Coastal Resources Management Council, 4808 Tower Hill Road, Wakefield, RI.

**MEMBERS PRESENT**

Michael M. Tikoian, Chair  
Paul E. Lemont, Vice Chair  
David Abedon  
Donald Gomez  
Bruce Dawson

**STAFF PRESENT**

Grover Fugate, CRMC Executive Director  
Jeff Willis, Deputy Director  
James Boyd, Coastal Policy Analyst  
Caitlin Chaffee, Coastal Policy Analyst  
Brian Goldman, Legal Counsel

**OTHER ATTENDEES**

Doug Groff  
Cynthia Giles, CLF

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**Call to Order.** Mr. Tikoian called the meeting to order at 5:13 p.m.

Hearing no objection, Mr. Tikoian asked the subcommittee to dispense with the reading of the usual opening statements, but to have them reflected within the record nonetheless:

*Mr. Tikoian made a brief statement of the subcommittee's function and purpose. The Planning and Procedures subcommittee meeting is an open public meeting; it is not a public hearing. Therefore, discussion is available to the Council members themselves, and to all else at the allowance of the Chairman. Mr. Tikoian further explained that the subcommittee is the program and policy development arm of the Council, and that any programmatic decisions made by this group must ultimately be approved by the full Council in accordance with all proper procedures.*

*Mr. Tikoian made a statement as to why the subcommittee meetings are held at his offices, Piccerilli Gilstein & Company. Mr. Tikoian stated that the meetings are held at Piccerilli Gilstein & Company to facilitate a number of issues: ease of transition from the previous location (CRMC's Providence office at 40 Fountain Street) which had to be changed because the Council's downtown office was closed due to budget cuts; accommodation of subcommittee members whose work locations and/or residences are in or nearer to Providence; and, it's cost to the agency: free. Mr. Lemont reiterated the fact that the accommodation of members is a key issue for participation in any work of the Council; and, the wear and tear on personal vehicles is high enough and that by holding the meetings in Providence, costs can be kept to a minimum. Also, Mr. Lemont wanted the record to reflect that the Chairman should be congratulated for letting the subcommittee use his company's office space for these meetings because it addresses the many concerns raised above.*

The Chair asked the members if there were any questions concerning the July 17, 2007 meeting minutes that was included in their agenda packets. There were no questions and Mr. Tikoian requested a motion to approve the subcommittee's July 17, 2007 meeting minutes.

*Mr. Lemont, seconded by Mr. Dawson, moved to approve the July 17, 2007 meeting minutes. All voted in favor of the motion to approve.*

**Item 5.A – Merging of Lots and SAMP regulations.** G. Fugate explained that staff has been asked what SAMP regulations apply in instances where lots are to be merged. Further, it has been presented to staff that municipalities are requiring, in various instances, that such mergers occur. G. Fugate and B. Goldman explained that the agency's regulations for the definition of subdivision mimic those of the state statutes, and therefore when a lot line is moved, it constitutes a subdivision and the agency's regulations take effect. The subcommittee commented that merging to create larger lots is generally better for development purposes, especially in sensitive areas such as the SAMPs, where build-out on pre-platted undersized lots could pose environmental concerns. G. Fugate noted that in instances of lot mergers, some situations occur where the new larger lot would be held to current regulations that require a Special Exception be obtained to develop, where if the lots were not merged and kept at the smaller pre-platted size, they could be developed without having such a high hurdle to jump, and that this issue needed to be addressed. In essence, the special exception requirement appears to penalize those merged larger lots where if not merged, development on each could more readily occur. The subcommittee agreed with this assessment.

G. Fugate explained that staff could develop regulations that address the issue especially in light of municipal requirements for lot mergers that do not penalize that merger but also accounts for addressing the agency's environmental concerns, especially in poorly flushed estuaries such as the SAMPs. Mr. Gomez cautioned that we need to be aware that once merged, lots can again be subdivided into new configurations (ie: more lots than what the merged lots provided), and that any such regulatory development needs to account for this. Mr. Tikoian stated that any such regulation should show that the subdivision causes a net increase in new lot sizes. Mr. Abedon suggested that maybe this task could also address the issue within the agency's entire jurisdiction, not only in the SAMPs.

Mr. Lemont asked if staff knew how many lots were available for merging. G. Fugate could not answer that as most municipal requirements for such occur during the local review process and that that data would be known on a case-by-case basis.

*Mr. Lemont, seconded by Mr. Abedon, moved to have staff begin the development of regulations that address this issue as discussed. All voted in favor of the motion.*

**Item 5.B – Salt Pond Region and Narrow River SAMPs – Affordable Housing Rule-Change.** G. Fugate presented how the so-called 'affordable housing' amendments – Section 920.1.A.2(j) and 920.1.B.2(k) of both SAMPs - were originally advertised and approved in accordance with APA procedures, but at the meeting immediately following said approval (February 14, 2006), the council acted on a petition to reconsider these rule changes and directed staff to begin rule-making anew, with the purpose of seeking additional comments and holding a workshop to solicit same.

J. Boyd explained that a workshop was held (June 14, 2006) and how the comments generated at the workshop and through the comment period were addressed and subsequently made part of the staff report and recommendation for action on the future of the rule change for council consideration. J. Boyd also explained how available scientific research gathered and considered by staff affected the issue and how it was incorporated into the staff report.

J. Boyd concluded that based on the comments received and the science considered, staff is recommending that the rule-making process for this proposed regulation change be rescinded; that the proposed so-called 'affordable housing' amendments not be adopted; and, that the language of these SAMP sections remains as is without modification.

*Mr. Lemont, seconded by Mr. Abedon, moved to suspend the rule-making process for the so-called 'affordable housing' changes. All voted in favor of the motion.*

**Item 5.C – State Property Transfers.** J. Willis presented the process by which the state disposes of its surplus properties, ie: all appropriate review agencies are notified of any potential such transactions and are asked to comment on the transfer as it may relate to 1) an objection to such transfer; and 2) the agency's rules and regulations. J. Willis explained how a recent DOT proposal to sell a small waterfront parcel was handled by the agency (ie: CRMC comments were forwarded to DOT through the state coordinating agency for such transactions, Statewide Planning) which resulted in a meeting between DOT and CRMC. At said meeting, DOT learned of the agency's regulations generally (Redbook policies) and specifically (Greenwich Bay SAMP) that any potential buyer would need to be aware should they purchase and subsequently develop the property. At the meeting DOT explained to staff how other agencies were objecting to sale. DOT then introduced the concept of only selling the 'riparian' rights and maintaining ownership of the property.

The subcommittee directed G. Fugate to contact the DOT director and discuss this issue with the DOT director and report back to the subcommittee with his findings.

**Item 5.D – Conservation Lands and Water Types Designations.** G. Fugate introduced Caitlin Chaffee to the subcommittee. C. Chaffee presented the issue wherein the Council was asked by the Audubon Society of Rhode Island to consider re-designating various water bodies abutting Audubon-identified conservation lands that were currently Type 2 waters of higher to Type 1 waters, to further protect those lands. This request was brought to the subcommittee's attention in the fall of 2006 where the subcommittee directed staff to develop a more comprehensive list of such properties that could also be better protected by similarly revising the water type designation. C. Chaffee presented that list and noted that there were properties that staff could support immediately for such a water type change and some that needed additional research on the potential issues associated with such a revision. Of the properties that staff could support immediately, a water type revision to Type 1 would result in almost 1,300 acres of additionally protected conserved lands. Proposed language to support the four (4) water type revision was also provided.

*Mr. Dawson, seconded by Mr. Gomez, moved to begin rule-making for the four (4) water type changes as presented. All voted in favor of the motion.*

**Item 5.E – Submerged Cable Fees per the 2007 Legislation.** Mr. Tikoian presented the background of this funding issue relative to Coordination Team initiatives over the past few years. Mr. Tikoian stated that the CT has been trying to fund a suite of monitoring projects that will enhance existing efforts while also providing for a more comprehensive baseline effort. Recent funding requests of the CT have not been as successful as hoped, and recent legislation passed offered that in order to fund the monitoring requests of the CT, certain fees should be established and/or increased so that such revenues would be available to fund these CT-directed monitoring efforts - one of these new and/or increased fees being that the Council establish annual submerged lands fees for transatlantic cables of up to \$80,000 per cable. G. Fugate explained that in doing previous research on cable fees from other jurisdictions, an \$80,000 per year figure seemed to be reasonable, but that that figure was for total annual revenues, not per cable revenues.

The subcommittee discussed that while the Council would be responsible for creating the fee schedule for such through rule-making procedures, and also for administering the program with each cable owner, the funds would be deposited into a restricted account away from the agency. Mr. Tikoian noted that this was true, but in the spirit of cooperation that is the CT and which the Council is a member, it is a task that the agency needs to embrace and implement in accordance with the legislation.

B. Goldman explained how any such fee should be set using a rational basis and that a fair market analysis should be used. Mr. Lemont offered that the fee might need to be higher than that of what could be expected from a fair market analysis due to the intent of the legislation. Mr. Dawson stated that any such fees should be in-line with similar fees of other jurisdictions.

Mr. Lemont warned that any fee that the Council establishes for these transatlantic submerged cables may be a subject of issue to the PUC, and that it may be possible that a fee schedule established by the Council could result in higher consumer rates, which could put significant pressure on the Council.

Mr. Tikoian directed staff to research the current fees assessed by other jurisdictions and develop a fair market analysis with rationale for establishing an annual fee schedule for submerged transatlantic cables to be discussed at a future subcommittee meeting.

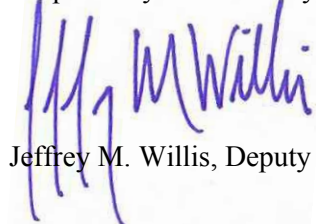
**Item 7.A. – Staff Report – Proposed Rule Changes Currently Out-to-Notice.** G. Fugate explained that the proposed regulations currently undergoing rule-making and in the public comment stage of such received comments from Save the Bay and CLF to hold a workshop on same, and specifically to address the proposed Salt Pond Region and Narrow River SAMP regulation changes. That workshop was recently held where staff presented an explanation of each proposed change and received comments from the 20 ± persons in attendance. J. Boyd detailed the comments received and noted that based on those comments and any received during the formal comment period had been incorporated into a staff report to the Council for additional consideration when said proposed regulations are in front of the Council for a hearing.

Mr. Tikoian noted for the record that Save the Bay wrote thanking the Council for holding the workshop. J. Boyd added that the Council had just received a similar letter from CLF.

*Mr. Lemont, seconded by Mr. Dawson, moved to accept staff's report that addresses the additional comments received for the proposed regulations currently undergoing rule-making that will be available for council consideration at the upcoming hearing for said regulations. **All voted in favor of the motion.***

**ADJOURNMENT.** Mr. Lemont, seconded by Mr. Dawson, moved to adjourn the subcommittee meeting. All voted in favor of the motion and the meeting was adjourned at 6:47 p.m.

Respectfully submitted by



Jeffrey M. Willis, Deputy Director